



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

October 12, 2005

Saint-Gobain Performance Plastics, Inc.
Attn: Lauren P. Alterman
701 Daniel Webster Highway
Merrimack, NH 03054

Re: Docket No. AF 05-053 Administrative Fine by Consent Agreement

Dear Ms. Alterman:

Enclosed for your records is a copy of the fully executed and accepted Administrative Fine by Consent Agreement in the above-captioned matter.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

COPY

Michael P. Sclarani,
Legal Assistant

cc: Michael J. Walls, DES Assistant Commissioner
Anthony P. Giunta, P.G., Director, Waste Management Division
Gretchen R. Hamel, Administrator, DES Legal Unit
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
DES Public Information Officer
Linda Birmingham, DES WMD



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Saint-Gobain Performance Plastics, Inc.
701 Daniel Webster Highway
Merrimack, NH 03054

**ADMINISTRATIVE FINE
BY CONSENT
NO. AF 05-053**

I. INTRODUCTION

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Waste Management Division, and Saint-Gobain Performance Plastics, Inc. pursuant to RSA 147-A:17-a. This Administrative Fine by Consent ("Agreement") is effective upon signature by all parties.

II. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its main office at 29 Hazen Drive, Concord, NH.
2. Saint-Gobain Performance Plastics, Inc. ("Saint-Gobain") is a California corporation that registered with the New Hampshire Secretary of State's Office on April 24, 2003. Saint-Gobain has a local mailing address of 701 Daniel Webster Highway, Merrimack, NH.

III. BACKGROUND

1. Pursuant to RSA 147-A, the Department of Environmental Services regulates the management and disposal of hazardous waste. Pursuant to RSA 147-A:3, the Commissioner of DES has adopted Env-Wm 100-1100 ("Hazardous Waste Rules") to implement this program.
2. Pursuant to RSA 147-A:17-a, the Commissioner of DES is authorized to impose fines of up to \$2,000 per offense for violations of RSA 147-A or rules adopted pursuant thereto. Pursuant to this section, the Commissioner has adopted Env-C 612 to establish the schedule of fines for such violations.
3. Saint-Gobain (formerly Chemfab) is a hazardous waste generator that originally notified the United States Environmental Protection Agency ("EPA") of its activities through DES on January 8, 1992. EPA Identification Number NHD 982746778 was assigned to the site located at 701 Daniel Webster Highway, Merrimack, NH (the "Facility"). Saint-Gobain filed a subsequent notification form on July 16, 2002 changing the Facility's name from Chemfab to Saint-Gobain.

4. On September 22, 2004, DES personnel inspected Saint-Gobain for compliance with RSA 147-A and its implementing regulations, the New Hampshire Hazardous Waste Rules. As a result of the violations of the Hazardous Waste Rules observed during this inspection, DES issued a Notice of Past Violation ("NPV") to Saint-Gobain on February 3, 2005. Based on the violations observed during the inspection listed above, DES believes that an administrative fine is appropriate in this case for the Class I violations.

IV. ALLEGATIONS, ADMINISTRATIVE FINES

1. Saint-Gobain failed to conduct an adequate waste determination for the one (1) 55-gallon container of unknown waste at the outside area, as required by Env-Wm 502.01 ("Violation 1"). Env-C 612.05(a) authorizes a fine of \$1,500 per determination.

DES is not seeking a potential fine for the one (1) 55-gallon container of unknown waste because Saint-Gobain documented that the container was empty but had collected rainwater.

2. Saint-Gobain failed to place hazardous waste in a container that was in good condition (*i.e.*, one (1) 15-gallon container was severely dented), as required by Env-Wm 507.01(a)(1) ("Violation 2"). Env-C 612.06(b) authorizes a fine of \$1,000 per container for full quantity generators.

3. Saint-Gobain failed to mark one (1) 55-gallon container of hazardous waste in the main storage area with the beginning accumulation date when it was used to store hazardous waste, as required by Env-Wm 507.03(a)(1)a. ("Violation 3"). Env-C 612.06(k) authorizes a fine of \$250 for each container that is 55-gallons or greater.

4. Saint-Gobain failed to properly mark one (1) 15-gallon container, five (5) 55-gallon containers and one (1) 70-gallon container of hazardous waste in the main storage area with the EPA or state waste number, as required by Env-Wm 507.03(a)(1)d. ("Violation 4"). Env-C 612.06(l) authorizes a fine of \$600 for each container that is 55-gallons or greater and \$300 for each container that is less than 55-gallons for a potential fine of \$3,900.

5. Saint-Gobain failed to maintain a complete contingency plan on-site, as required by Env-Wm 509.02(a)(5) ("Violation 5"). Env-C 612.07(e) authorizes a fine of \$2,000.

6. Saint-Gobain failed to have on file three (3) original generator copies (*i.e.*, Manifest No. MI9057067, Manifest No. MI9057092 and Manifest No. MAQ737581) and five (5) hazardous waste manifests certified by the designated facility (*i.e.*, Manifest No. MAQ930254, Manifest No. MI9057357, Manifest No. MI9057363, Manifest No. NHH0060353 and Manifest No. MDC1012901) as required by Env-Wm 512.01(a)(1) ("Violation 6"). Env-C 612.08(a) authorizes a fine of \$300 per type of record for a potential fine of \$600.

7. Saint-Gobain failed to store twenty-three (23) universal waste lamps, located in the Outdoor Shed, in container(s) as required by Env-Wm 1112.03(a) and Env-Wm 1102.03(c) ("Violation 7"). Pursuant to Env-C 610, a fine of \$1,000 for storage practices that pose a hazard to human health and the environment has been calculated.

8. Saint-Gobain failed to label/mark twenty-three (23) universal waste lamps and one (1) box of universal waste lamps, and five (5) universal waste lamps taped to the top of this box all stored in the Outdoor Shed with any of the following markings: "Universal Waste – Lamps(s) ," "Waste Lamp(s) ," or "Used Lamp(s) ," as required by Env-Wm 1112.04 and Env-Wm 1102.03(c) ("Violation 8"). Pursuant to Env-C 610, a fine of \$100 for each container has been calculated, for a potential fine of \$2,900.

9. Saint-Gobain failed to mark one (1) cubic yard box of CRTs located in the Main Storage Area with any of the following markings: "Universal Waste – Cathode Ray Tubes", "Waste Cathode Ray Tube(s)", or "Used Cathode Ray Tube(s)", as required by Env-Wm 1102.03 and Env-Wm 1113.04 ("Violation 9"). Pursuant to Env-C 610, a fine of \$100 for each container has been calculated.

V. PAYMENT, WAIVER OF HEARING

1. DES agrees to waive fines associated with Violations 1, 3 through 5 and 7 through 9, because they are not Class I violations.

2. DES believes the following fines are appropriate for Violations 2 and 6 which are Class I violations.

- a. Violation 2 is a Class I violation. DES has determined that due to Saint-Gobain's high level of cooperation in providing information, its effort to correct the violation and other circumstances, that a 45% reduction should be applied (*i.e.*, cooperation (25%) and other circumstances (20%)). DES is thus seeking a fine of \$550.
- b. Violation 6 is a Class I violation. DES has determined that due to Saint-Gobain's high level of cooperation in providing information and its effort to correct the violation, that a 25% reduction should be applied. DES is thus seeking a fine of \$450.

3. Saint-Gobain agrees to pay \$1,000 upon execution of this Agreement by an authorized representative of Saint-Gobain.

4. Payment under Section V. Paragraph 3 shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and shall be mailed to:

DES Legal Unit
Attn: Michael Sclafani, Legal Assistant
PO Box 95
Concord, NH 03302-0095

5. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

6. By executing this Agreement, Saint-Gobain waives its right to a hearing on or any appeal of the administrative fines identified in this Agreement, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.
7. The effective date of this Agreement will be the date on which it is signed by an authorized representative of Saint-Gobain, and the Director of the Waste Management Division, and the Commissioner of DES.
8. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.
9. The parties have entered into this Agreement to avoid the time and costs of litigation. Except as described in this paragraph, this Agreement shall not constitute, be construed as, or operate as: (i) an admission or evidence of liability by Saint-Gobain; (ii) an admission by Saint-Gobain or evidence that it violated any law, rule, regulation, policy or regulatory interpretation; or (iii) a waiver of any defense Saint-Gobain might raise in any third party proceeding.
10. Saint-Gobain shall not challenge the validity of the violations alleged herein in the context of any future proceeding by DES assessing the compliance history of Saint-Gobain and alleging violations of the New Hampshire Code of Administrative Rules or statutes, or in any proceeding before DES to enforce this Agreement.

WHEREFORE, the parties voluntarily accept the terms of this Agreement.

SAINT-GOBAIN PREFORMANCE PLASTICS, INC.

COPY

Lauren P. Alterman, Associate General Counsel
Duly Authorized

9-22-05
Date

DEPARTMENT OF ENVIRONMENTAL SERVICES

COPY

Anthony P. Giunta, P.G., Director
Waste Management Division

10/5/05
Date

COPY

Michael P. Nolin, Commissioner

10 10 05
Date